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OF COUNSEL

JAMES W. MURPHY
WAYNE H. SCOTT

January 2, 2014

Acton Zoning Board of Appeals
Town of Acton
472 Main Street
Acton, MA 01720

**Re: Appeals of Zoning Enforcement Officer Decision Date December 13, 2013 Regarding
107-115 Great Road, Acton, Massachusetts 01720**

Dear Members of the Zoning Board of Appeals:

This office represents Mr. Leo Bertolami, Manager, Wetherbee Plaza, LLC, owner of the building at 107-115 Great Road, Acton, Massachusetts. The LLC is in receipt of the Zoning Enforcement letter regarding use of the building. In accordance with M.G.L.A. c. 40A, §15, the LLC is appealing the above-referenced letter with respect to Mr. Bertolami's request to place an instructional and training facility for classic cars on the premises.

As the Selectmen have observed, keeping tenants in this building has been difficult over the years. Retail facilities and food service occupants have come and gone. A vacant building is an eyesore and not attractive. Mr. Bertolami has accumulated many classic cars and memorabilia over the years, which are stored throughout Acton and other communities. He would like to have these automobiles under one roof similar to a museum and has taken steps for it ultimately to be a non-profit museum.

However, prior to become a non-profit museum, Mr. Bertolami will operate the business as a non-profit industrial facility pursuant to 3.4.11 of the By-law. No display sales will occur.

The Zoning Enforcement Officer's letter of denial is correct in that Mr. Bertolami intends to apply for an automobile museum use in the future, however the IRS approval takes an extraordinary time. Mr. Bertolami has retained an accountant to prepare the application for the 501(c)(3) designation.

In the meantime, our reading of the regulations allows Mr. Bertolami's use of the building as an instructional and training facility under Section 3.4.11 of the Acton Zoning By-law. The basis for this interpretation is included in my letter to Scott Mutch dated October 29, 2013, which is attached and hereby made a part of the record. The document includes the argument as to why Mr.

Acton Zoning Board of Appeals

January 2, 2014

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Bertolami's use is consistent with the training and instruction requirements of the By-law as a for-profit venture prior to becoming a non-profit museum.

We request a hearing on this appeal and a determination that the facility can be used for instructional and training purposes under the By-law.

I have attached the following:

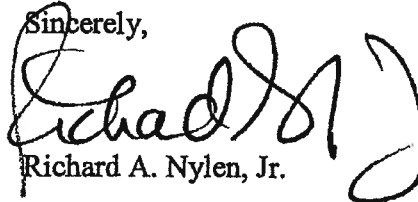
1. Enforcement Officer letter dated December 13, 2013;
2. Letter to Enforcement Officer dated October 29, 2013;
3. A completed Petition to the Board of Appeals.
4. Abutters List.

Mr. Bertolami will take care of the check under separate cover.

We look forward to hearing from you.

Thank you.

Sincerely,



Richard A. Nylen, Jr.

RAN/kw
Enclosures

cc: Mr. Leo Bertolami
Mr. Scott A. Mutch
Mr. Roland Bartl



Zoning Enforcement Officer

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 929-6340
planning@acton-ma.gov
www.acton-ma.gov

December 13, 2013

Mr. Leo Bertolami, Manager
Wetherbee Plaza LLC.
6 Proctor Street
Acton, MA 01720

Re: Proposed Alterations to Existing Building to Create New "Automobile Museum" & 2
(Two) Apartment Units
107-115 Great Road, Acton, MA 01720

Dear Mr. Bertolami,

The Planning Department has reviewed your submitted building permit application and CAN NOT approve it at this time. The pending building permit is seeking approval for interior and exterior alterations to an existing building in order to create a new "automobile museum" on the ground floor and two (2) apartment units on the second floor.

You have represented to this office on more than one occasion, that it is your intention and desire to convert this building from the previously approved retail use to an "Automobile Museum" for the display and "storage" of your various personal automobiles.

Based upon information presented and submitted to this office, it is my interpretation and determination, that the "Automobile Museum" USE being proposed can be classified as nothing other than an Educational Use as defined in Zoning Bylaw Section 3.4.2. Section 3.4.2 of the Town of Acton's Zoning Bylaw defines Educational Uses as follows:

3.4.2 Educational – USE of land, BUILDINGS and STRUCTURES for providing instruction or education in a general range of subjects, on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a nonprofit educational entity. Such USE may include museums, libraries, auditoria, athletic facilities, dormitories, administrative offices, or similar facilities and activities whose purpose is substantially related to the educational purposes of the owner

While there is no objection to the proposed "Automobile Museum" USE, there are requirements which must be satisfied prior to the USE commencing. As we have previously discussed, in

order for you to operate an "Automobile Museum" as you desire, the creation of a nonprofit 501(c) educational entity is required. I CAN NOT sign-off on or approve any building permit until such a time that you provide sufficient documentation that you have created the nonprofit 501 (c) entity required.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except holidays) between the hours of 8:00 am and 5:00 pm.

Sincerely,

Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner

LYNCH, DESIMONE & NYLEN, LLP

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BOSTON, MASSACHUSETTS 02109

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OF COUNSEL

JAMES W. MURPHY
WAYNE H. SCOTT

Email: RNylen@ldnllp.com

October 29, 2013

Via Email & 1st Class Mail

Mr. Scott Mutch
Building Enforcement Director
Town of Acton
472 Main Street
Acton, MA 01720

**Re: Bertolami, Wetherbee Plaza; 107 Great Road;
Use of Premises for Instructional and Training Facility**

Dear Enforcement Officer Mutch:

This office represents Leo Bertolami and Northeast Collection, Inc. ("Northeast") with respect to the proposal to establish an instructional, educational and training facility at 107 Great Road in the East Acton Village District. Northeast is in the process of applying for designation as a nonprofit educational use under 501(c)(3) of the Internal Revenue Code and has been informed that the process for such approval will take time.

In the interim, prior to designation as a nonprofit museum, as discussed in correspondence between this office, your office and the Planning Office, Northeast would like a formal determination from the Acton Zoning Enforcement Officer under MGL, Chapter 40A that the use of the property for instruction, education and training in the for profit business of classical automobile collection and classic automobile maintenance and service is allowed under Section 3.4.11 of the Acton Zoning Bylaw.

In support of Northeast's position that an instructional and training facility is an allowed use, we state the following:

1. Mr. Bertolami and Northeast are in possession of a substantial number of specialty and unique and exotic automobiles that have been collected over time.

2. A listing of the automobiles is attached as Exhibit 1.

3. In addition to the classic, exotic and specialty vehicles, Northeast and Mr. Bertolami are also in possession of substantial collection of vintage and restored automobile memorabilia and reproductions. Other collections of interest are old license plates and those of celebrities along with farm tractors and other unique vehicles.

4. The automobiles listed on Exhibit 1 are in storage in various parts of Acton and Massachusetts and Mr. Bertolami and Northeast would like to bring them under one roof.

5. Mr. Bertolami intends to offer training and instruction at a cost by teaching and by bringing in instructors to train individuals in automobile mechanics, engine function, engine repair, classic automobile collection, finance, classic automobile maintenance and classic automobile purchase.

6. Training and instruction services will be provided and geared to specific individuals or groups including students and tradesmen. Expected training and instruction will take place in the following areas:

- a. Reliable sources of information for collection
- b. Registration of vehicles
- c. Insuring vehicles and memorabilia
- d. Sources of financing for collections
- e. Sources of appraisals
- f. Investment and tax considerations
- g. Maintenance and storage requirements
- h. Repairs and restoration
- i. Sources for parts, tools and services
- j. Shipping of vehicles - locally and interstate
- k. Securing financing for collections

Instruction will also include seminars which display one type or class of automobile.

An on-site and web site will be maintained and include sources of information and instruction opportunities.

Section 3.4.11 of the Bylaw does not require any specific amount of revenue to be generated, only that the business is a for-profit venture. To the extent that an admission is charged

October 29, 2013

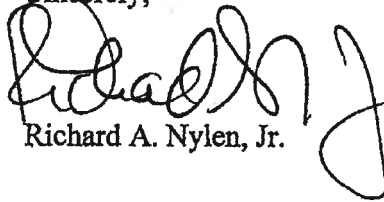
Page 3

and instruction and training in the above is offered for a fee, it is our opinion that the use is consistent with its provisions and allowed under the Bylaw.

We look forward to any questions and for your response.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Nylen, Jr.", with a large, stylized flourish at the end.

Richard A. Nylen, Jr.

RAN/kad

cc: Mr. Roland Bartl, Planning Director
Mr. Leo Bertolami/Northeast Collections, Inc.
Mr. Mark Donohoe

EXHIBIT 1

INVENTORY

1. A 2008 1,225 mile Ferrari Spyder, with every factory option, absolutely brand new, not another one on the east coast – exotic specialty vehicle.
2. 1955 Porsche Spider, silver, a custom built recreation car by Beck, a private west coast auto builder similar to George Barras who designed the Monkee Mobile, the Beverly Hillbillies Roadster and most of all the early television specialty vehicles. The 1955 Porsche was created in memory of the death of James Dean and Leo believes remains the only on the east coast and only one of two in the world.
3. A brand new 2002 Ford Thunderbird, first one invoiced to Acton Ford with 100 miles on the odometer with the window sticker still on and the plastic still on the seats.
4. 2004 Dodge Viper Powertrain Pickup, 100 miles, window sticker in place, plastic still on seats. First one received in September 2003 when Daimler Chrysler had decided to put a truck body on their sports car.
5. Two 1992 (GEM) cars, both are registered. They were built when the Mercedes/Chrysler merger took place. At that time, Chrysler with its newly reintroduced hemi engine from the past in Mercedes Benz, trying to derive more horsepower and more horsepower, almost recreating 700 horsepower to be able to be ordered to be the local dealer. The GEM cars are double battery operated similar to hybrid plug ins of today but the GEM cars CAFA lowered the gas mileage for Daimler Chrysler. These registered approved vehicles all went away after 2002 after government realized they had given one of these to every dealer and they really were not doing their job as promised. Only a dozen or so exist today on private country clubs, couple of larger airports and I have #10 and #11.
6. A 1945 Ford Tractor completely restored w/the original Bill of Sale purchased 35 years ago from Teto Florios Farm. A nursing home replaced the farm across the street from the Emerson Hospital formally Xavier High School and Sentry Insurance Co.
7. 1925 Ford Fordson Tractor Iron Wheel Tractor completely restored, dismantled bolt-by-bolt, w/a 5 year restoration project. Purchased from a farm in New York, completely original restoration and the original mahogany steering wheel has the shine and gloss of an estate piece of furniture.
8. 1994 Ford Mustang Indianapolis 500 Motor Speedway Pace Car delivered to Acton Ford, summer of 1994, with brand new decal kit. This is an original, one owner car, delivered to me after the race. Conversational, educational and instructional show piece.
9. 1970 Mustang Mach I, a true southern belle. One owner, American muscle car classic. 39,000 miles matching numbers on original bill of sale. One of 21 built this way. Cobra package as factory option, scoop hood with only a handful of survivors remaining.

10. 1967 Ford Mustang Convertible. Original owner. Car owned by the Saltonstall family, one of the Massachusetts Governors. It is one of one and still has a pair of low Mass Digit plates that belonged to the Saltonstall family.
11. 1997 Land Rover Defender. Ninety in the production line. Original, one owner. Chicago parade car. The car is made to climb any mountain, rock road and a straight angle. Immaculate unrestored, perfect condition.
12. 2008 Lamborghini Gallardo. 700 miles, completely loaded with a long interesting history.
13. 2008 Mercedes Benz McClaren. Over 700 factory horse power sold to Yankee Candle from Flagship Motor Cars for \$525k brand new. Gull wing doors. Truly educational and instructional, and a one-of-a-kind with no mileage. Yankee Candle was just sold for \$1.4 billion. Some of the Yankee Candle Museum vehicles are sold.
14. 1957 Bentley. Right hand drive saloon limo. Former wedding car from the International Hotel Group. Unrestored, but great original condition. Can be viewed, discussed, explained, either restored or unrestored.

Richard Nylen

From: Richard Nylen
Sent: Tuesday, October 29, 2013 4:17 PM
To: 'Scott Mutch'
Cc: Roland Bartl; Leo Bertolami; 'Mark Donohoe'
Subject: Bertolami, Wetherbee Plaza; 107 Great Road; Use of Premises for Instructional and Training Facility
Attachments: Bertolami-Ltt to Mutch 10-29-13.pdf

Attached please find correspondence regarding the above referenced subject.

Thank you.

Chip
Richard A. Nylen, Jr., Esq.
Lynch, DeSimone & Nylen, LLP
10 Post Office Square, Suite 970N
Boston, MA 02109
Tel: (617) 348-4500, ext. 231
Fax: (617) 348-4545
Email: rnylen@ldnllp.com

Date Received
TOWN CLERK

By: _____



Town of Acton
Massachusetts

Date Received
BOARD OF APPEALS

By: _____

**Board of Appeals
(Form 1)
Petition for Review**

_____ 20____
(See (1) Below)

I/We hereby petition the Board of Appeals for a public hearing under Section 11.1.1 of the Zoning By-law to review (a) the refusal of the Zoning Enforcement Officer to grant a permit under Section 3.4.11 of the Zoning By-law to allow: (b) ~~the refusal of the Zoning Enforcement Officer to enforce the provisions of Section 11.1.1 of the Zoning By-law~~ as follows: (Strike out Inapplicable language)

the use of the building at 107-115 Great Road for instruction, education and
training in the for-profit business of classical automobile collection,
maintenance and service

Date of Zoning
Enforcement Officer's Action 12/13/13

(1) Petition must be filed within 30 days
of refusal date with copy of decision
or order attached.

OFFICE USE ONLY

Seven copies of petition? _____

Location Map? _____

Plot plans? _____

Additional briefs? _____

List of abutters and
other interested
parties? _____

Fee - \$100.00/1-25 abutters?
\$125.00/26 + abutters? _____

Next Hearing Date? _____ # _____

Respectfully submitted,

Signed Leo Berdeman
(Petitioner)

Name Wetherbee Plaza LLC

Address 107-115 Great Rd

Phone # 978-430-4000

Signed Leo Berdeman
(Owner of Record)

Name _____

Address _____

Phone # _____

The Board of Appeals has the power and duty to hear and decide appeals (Section 11.1.1) from a decision of the Zoning Enforcement Officer

Revised 1/4/10



Town of Acton
472 Main Street
Acton, MA 01720
Telephone (978) 929-6621
Fax (978) 929-6340

Brian McKullen
Principal Assessor

Locust: 107 Great Rd
Parcel: G4-28

Parcel ID	LOCATION	Owner	Co-Owner	Mailing Address	City	ST	Zip
F4-104	128 GREAT RD	ATLANTIC HOLDINGS, INC.	C/O WOODSHIRE MANAGEMENT CORP	132 GREAT ROAD	ACTON, MA	01720	
F4-105	121 GREAT RD	FEDERAL INVESTMENT TRUST NO 1		PO BOX 393	BEDFORD, MA	01730	
F4-89-1	125 GREAT RD	ACTION J M REALTY LLC		4 WISTLER LN	SOUTHBOROUGH, MA	01772	
F4-89-2	129-133 GREAT RD BEHIND	ELLSWORTH VILLAGE LLC	SIMONE MARIA A TRUSTEE	PO BOX 985	ACTON, MA	01720	
F4-89-201	1 ELLSWORTH VILLAGE RD	SIMONE ROBERT T TRUSTEE		SIMONE REALTY TRUST	ACTON, MA	01720	
F4-89-202	3 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC		PO BOX 985	ACTON, MA	01720	
F4-89-203	5 ELLSWORTH VILLAGE RD	MACONE JEANETTE R		5 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-204	7 ELLSWORTH VILLAGE RD	BOOSE ROBERT E	BOOSE EDWINA DRUMMOND	7 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-205	9 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC		PO BOX 985	ACTON, MA	01720	
F4-89-206	11 ELLSWORTH VILLAGE RD	CARNEY GAETANA M		11 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-207	13 ELLSWORTH VILLAGE RD	SHAPAZIAN CAROLE J TRUSTEE		187 EIGHTH ST #204	CHARLESTOWN, MA	02129	
F4-89-208	15 ELLSWORTH VILLAGE RD	COMEAU BARBARA F TRUSTEE		15 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-209	17 ELLSWORTH VILLAGE RD	SONG RUA HUA	ELLSWORTH VILLAGE ROAD REALTY TRUST	17 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-210	19 ELLSWORTH VILLAGE RD	ROVIN ALYN	MU DONG OING	19 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-211	21 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC	ROVIN NANCY N	21 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-212	23 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC	C/O EATON PAULINE C	PO BOX 985	ACTON, MA	01720	
F4-89-213	25 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC	C/O JACOBS HERBERT J	26 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-214	27 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC	C/O CALIRI ANTHONY C + JANET H	27 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-215	29 ELLSWORTH VILLAGE RD	HUNT RAYMOND G	HUNT SUSAN L	27 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-216	31 ELLSWORTH VILLAGE RD	MUELLER ELLEN S		PO BOX 3040	ACTON, MA	01720	
F4-89-217	33 ELLSWORTH VILLAGE RD	MCCLOUGHLIN JAMES + AMY		36 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-218	35 ELLSWORTH VILLAGE RD	LABOW KENNETH	LABOW KAREN BETH	36 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-219	37 ELLSWORTH VILLAGE RD	KENNEDY JAMES R	KENNEDY ALICE D	34 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-220	39 ELLSWORTH VILLAGE RD	BOTTOS PHILIPPOS A	BOTTOS AFRODITI	32 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-221	41 ELLSWORTH VILLAGE RD	SIMONE ELISE C		30 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-222	43 ELLSWORTH VILLAGE RD	ELLSWORTH VILLAGE LLC	C/O RUBIN ROBERT J + DONMARAE A	28 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-223	45 ELLSWORTH VILLAGE RD	BASILE ANNE R		26 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-224	47 ELLSWORTH VILLAGE RD	PALMACCIO LEONA E		24 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-225	49 ELLSWORTH VILLAGE RD	HEILAND CYNTHIA G TRUSTEE	HEILAND INVESTMENT TRUST	22 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-226	51 ELLSWORTH VILLAGE RD	LAFOLEY MICHAEL J	C/O SONG BAORYUN + WEI	20 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-227	53 ELLSWORTH VILLAGE RD	BRIGGS KAREN S		18 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-228	55 ELLSWORTH VILLAGE RD	ARNOLD THOMAS B	ARNOLD DORSEY F	16 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-229	57 ELLSWORTH VILLAGE RD	GAUTHIER GAIL TRUSTEE	OF THE GAIL E GAUTHIER TRUST	12 ELLSWORTH VILLAGE RD	ACTON, MA	01720	
F4-89-230	59 ELLSWORTH VILLAGE RD			10 ELLSWORTH VILLAGE RD	ACTON, MA	01720	